



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT**  
**AT NAIROBI**  
**CAUSE NUMBER 798 OF 2014**  
**BETWEEN**  
**GEORGE OMONDI ARUM.....CLAIMANT**  
**VERSUS**  
**NATIONAL AIDS CONTROL COUNCIL.....RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Achach & Company Advocates for the Claimant*

*Kibatia & Company Advocates for the Respondent*

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**JUDGMENT**

**The Claim**

1. The Claimant filed his Statement of Claim on 14<sup>th</sup> May 2014. He states he was employed by the Respondent as Head, Internal Audit, on a 3-year contract, commencing 17<sup>th</sup> November 2006. He was confirmed in this position on 21<sup>st</sup> August 2007.
2. He was charged in Makadara Chief Magistrate's Court, Anti-Corruption Case Number 1 of 2009, with a corruption offence.
3. He was suspended on half-pay by the Respondent following the arraignment, under Section 62 of the Anti-Corruption and Economic Crimes Act. The letter of suspension is dated 5<sup>th</sup> March 2009.
4. Through a letter dated 15<sup>th</sup> June 2009, the Respondent notified the Claimant that his contract was expiring on 17<sup>th</sup> November 2009. The Claimant was asked to give an indication, if he wished to renew the contract.
5. The Claimant gave his intention to renew, in a letter dated 20<sup>th</sup> July 2009.
6. The Respondent replied on 8<sup>th</sup> December 2009 advising that no decision had been made, but that the full Council of the Respondent would make a decision in its meeting slated for 17<sup>th</sup> December 2009.
7. The Claimant has not received the decision of the Council, to-date. No letter of termination issued. He considered termination to have taken place on 17<sup>th</sup> November 2009.
8. The Claimant was acquitted of corruption charges in 2013. He wrote to the Respondent asking for reinstatement. He was not reinstated.
9. He therefore prays the Court to declare termination unfair and unlawful, and grant Judgment against the Respondent for:-

- a) Damages for wrongful termination.
- b) 3 months' salary in lieu of termination notice.
- c) Costs.

### **The Response**

10. The Respondent concedes the Claimant was its Employee, in its Statement of Response filed on 2<sup>nd</sup> July 2014. He was aware that his contract was coming to an end on 17<sup>th</sup> November 2009, as shown in his letter of 20<sup>th</sup> July 2009.
11. Respondent's Council met on 17<sup>th</sup> May 2010, and decided that "*the expired contract of the Claimant be terminated, and he is paid gratuity and unused leave days in accordance with existing policy.*"
12. The Claimant was paid all terminal benefits. He collected a cheque for the total sum of Kshs. 776,008 on 29<sup>th</sup> April 2013.
13. The Respondent had information that the Claimant was employed by the National Assembly from 1<sup>st</sup> July 2009. He did not disclose this to the Respondent. He did not report to work on 17<sup>th</sup> November 2009. His contract expired and was not renewed. The Respondent prays the Court to dismiss the Claim with costs.

### **Hearing**

14. The Claimant gave evidence, as did Respondent's Head of Human Resources, Gregory Joruba Were, on 16<sup>th</sup> October 2018, during the Court's service week at Nairobi. They restated in their oral evidence, the contents of their Pleadings as summarized above.
15. The Claimant added that he was acquitted in 2013, but did not have a copy of the relevant Judgment.

### **The Court Finds:-**

16. The Claim is time –barred under Section 90 of the Employment Act 2007. The Claimant's contract expired on 17<sup>th</sup> November 2009. Both Parties were aware under the contract, and as shown in Claimant's letter dated 20<sup>th</sup> July 2009, that the contract would lapse on 17<sup>th</sup> November 2009. The Claimant also wrote to the Respondent on 23<sup>rd</sup> November 2009, stating that, "*As you are aware, my contract as Head of Audit, the National AIDS Control Council, lapsed on 17<sup>th</sup> November 2009.*" The Claimant asked the Respondent to pay his gratuity accrued under the expired contract. It was unnecessary for the Respondent to resolve, later in May 2010, that the "*Claimant's expired contract be terminated.*" If a contract has expired, how is it again to be terminated?
17. The cause of action arose in November 2009, or latest May 2010, when the Respondent categorically made a decision not to renew Claimant's contract. The Claim was filed on 14<sup>th</sup> May 2014, 5 years after the contract expired, and 4 years after and the Respondent definitively resolved there would be no renewal.
18. Either way the period of 3 years given, counting from the date of termination, on filing of employment claims under Section 90 of the Employment Act 2007, had long expired at the time the Claim was filed.
19. Time-bar aside, the Court agrees with the Respondent that: renewal of the Claimant's contract was at the discretion of the Respondent; the contract was not terminated by the Respondent, but lapsed on the date fixed by the Parties; the Claimant acknowledged that his contract lapsed on the date fixed by the Parties; and the Claimant was suspended lawfully from March 2009, with the contract expiring while the Claimant was still under suspension.
20. There was no obligation on the part of the Respondent to reinstate the Claimant 4 years after suspension in 2013, on the ground that the Claimant had been acquitted. The contract under which the Claimant served had long expired. It would not be reasonable to expect a Government Agency, to have renewed the contract of an Officer who was going through a corruption-related criminal trial. It would similarly have been unreasonable for the Respondent, to wait until the Claimant's criminal trial was through, to determine if his contract should be renewed. Although the letter of suspension states suspension would stay in place "*pending the outcome of the trial,*" the contractual date of termination arrived earlier than the outcome of the trial. Parties were released from their mutual obligations and rights, on 17<sup>th</sup> November 2009. This includes obligations arising under the letter of suspension. The Claimant could only pursue his terminal benefits, promised under the expired contract. He did this and was paid terminal benefits. The matter should have rested at that.
21. The Court is of the view that the Claim is time-barred. Even if not time-barred, the Claimant has not established that his contract was wrongfully terminated, or that he was denied renewal unreasonably. He does not merit damages and notice pay.

### **IT IS ORDERED:-**

***[a] The Claim is dismissed.***

***[b] No order on the costs.***

**Dated and signed at Mombasa this 30th day of January 2019.**

**James Rika**

**Judge**

**Dated, signed and delivered at Nairobi this 8<sup>th</sup> day of February 2019.**

**Byram Ongaya**

**Judge**